

Watch Where You Are Going: Court of Appeal Affirms Design Immunity Defense for
Concrete Bollards Placed in Front of Large Public Use Facility

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One of the issues facing public entities which maintain large public facilities is legal liability to pedestrians for obstructions which have been installed to deter vehicular traffic, including car bombs. In Los Angeles, the City of Los Angeles installed more than 50 bollards in front of its south hall in or about 2008. Bollards are round concrete pillars which, in this case, are 17.5 inches wide and 17.5 inches tall. The unpainted bollards protect the Los Angeles Convention Center from car bombs (they are the height of an average coffee table).

In Cynthia Dobbs, et al. v. City of Los Angeles, et al. (2019) Westlaw 52060043 ("Dobbs case"), pedestrian Cynthia Dobbs sued the City of Los Angeles for personal injuries claiming she walked into a concrete bollard on the sidewalk in front of the Convention Center. The City of Los Angeles did not dispute that the accident occurred but invoked the statutory defense of design immunity which shields public entities from personal injury claims when a public employee reasonably exercises discretionary authority when approving the design at issue. Government Code § 830.6. Section 830.6 of the Government Code requires the public entity to establish the following elements:

- (1) a causal relationship between the plan or design and the accident;
- (2) discretionary approval of the plan or design prior to construction; and
- (3) substantial evidence supporting the reasonableness of the plan or design.

In the Dobbs case, the City of Los Angeles argued that about two million people visit the Convention Center yearly and that, for the nine years before Dobbs' accident, no one filed an injury claim even though there are more than 50 bollards. The City then moved for Summary Judgment based on the Declaration of City Engineer (Project Manager) Robert Horii who approved the plans, which bore his office's official stamp. The trial court granted Summary Judgment.

On appeal, the Court of Appeal ruled that the City's Project Manager's declaration regarding the City's custom and practice of discretionary approval was sufficient to satisfy the design immunity element of discretionary approval of a design and the City's approval of its concrete bollard design was reasonable. The evidentiary record appears to have been relatively thin but the Court of Appeal ruled that testimony about the public entity's discretionary approval custom and practice can be proper even though the

witness was not personally involved in the approval process. In that regard, the Court ruled that, since the declarant had 14 years of experience in the relevant agency as a project manager, his pertinent personal experience was "substantial and sufficient." As for the reasonableness of the public entity's approval of the design, the Court noted that this question is one of law, not fact, and that the statute grants immunity as long as reasonable minds can differ concerning whether a design should have been approved (the design need not be perfect but merely reasonable under the circumstances). The Court ruled that the design of the bollards was reasonable even though there may have been arrows to two rows of bollards when there were three.

The Dobbs case is important as it confirms a relatively low threshold to invoke design immunity in cases involving public monuments, and particularly ones that provide security.

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